In the High Court of Punjab and Haryana at Chandigarh

…

C.E.C.No.190 of 2002

Date of decision:4.12. 2006

Commissioner, Central Excise,Commissionerate,Delhi-II .. Petitioner

Versus

M/s Hammer Forge, Faridabad and another.

..Respondents

Coram: **Hon'ble Mr.Justice Adarsh Kumar Goel**
**Hon'ble Mr.Justice Rajesh Bindal**

Present: Mr.Gurpreet Singh,Advocate
for the Petitioner.
None for respondent despite service.

..

ORDER:

The revenue has approached this Court by filing the present petition under Section 35 H of the Central Excise Act,1944 (for short, "the Act") seeking a direction to the Customs, Excise and Service Tax Appellate Tribunal (for short, "the Tribunal") to refer following question of law arising out of order passed by the Tribunal in final order No.,A/842/02/NB(SM) dated 4.7.2002.

i) Whether credit is admissible in terms of erstwhile provisions of Rule 57-C and 57 CC used in both dutiable as well as exempted goods when no separate account has been maintained with respect to exempted goods?

ii) Whether credit of the specific duty can be allowed on in puts used for manufacture of final product which are exempted from the whole of the duty or are chargeable to 'nil' rate of duty.

iii) Whether party is at least liable to pay 8% of the of the price (excluding sales tax and other taxes if any, payable on such goods), 'even if credit of duty is allowed'?

Brief facts of the case are that the assessee is engaged in the manufacture of Steel forgings and forged articles other than stainless steel of two wheeler falling under Chapter Heading No.8714.00 of the schedule to the Central Excise Tariff Act,1985 and was availing the benefit of MODVAT credit under Rule 57A/57Q of Central Excise Rules,1944. On scrutiny of monthly RT-12 returns for the period January 1999 to July 1999, it was noticed that the assessee besides being engaged in manufacture of dutiable goods was also carrying out job work for other parties without payment of any duty. On a pointed inquiry, it was revealed that the assessee was also using the modvatable inputs of its own i.e., furnace oil and short blasts for the purposes of job work. As the party was found to be utilizing their modvatable inputs in the manufacture of dutiable goods as also goods manufactured on job work basis but neither any duty was paid nor MODVAT credit was being reversed on the goods used in job work. As required under the rules, the assessee had failed to maintain separate accounts for inputs used in dutiable and duty free goods. The general rule of MODVAT credit is that the same is not available on such quantity of inputs which are used in the manufacture of final product, which is exempted from duty and assessee is required to maintain separate account for such inputs being used for two different categories of final products. On failure, the duty calculated at the rate of 8 % of the price, (excluding sales tax and other taxes, if any payable on such goods), was payable.

On notice of motion having been issued, no one has appeared for the respondent assessee despite service. We have heard learned counsel for the revenue and are of the view that the following question of law requires adjudication by this Court.

> “Whether the assessee is liable to pay duty at the rate of 8% on his failure to maintain separate accounts for inputs used in dutiable and duty free goods ?

Accordingly, we direct the Tribunal to send statement of case to this Court for determination of the above question of law .

The petition is disposed of.

(Adarsh Kumar Goel)
Judge

December 4,2006
nk

(Rajesh Bindal)
Judge